

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 638-D

Z.C. Case No. 93-13M/88-32C

(PUD Modification @ 1616 Rhode Island Avenue, N.W. - Gramercy)

November 14, 1994

By Z.C. Order No. 638-C dated August 1, 1994, the Zoning Commission for the District of Columbia approved a 3-year interim use for a parking lot on the site of a previously approved planned unit development (PUD) located on Lot 80 in Square 182 at 1616 Rhode Island Avenue, N.W., former site of the Gramercy Inn.

The PUD approval and related change of zoning from SP-2 to C-4 was for the construction of a mixed-use building containing residential, office, and retail uses. The height of the building is 106 feet and the floor area ratio (FAR) will not exceed 6.86, of which 1.64 FAR will be devoted to residential use. The PUD allows the applicant to have a variety of dwelling unit sizes, so long as there is a minimum of forty-eight (48) and a maximum of fifty-two (52) dwelling units in the PUD project. The PUD also permits parking of 125 spaces for commercial uses and not less than one parking space for each apartment unit. The total number of parking spaces on the site is permitted to vary from 173 to 177.

Z.C. Order No. 638-C was approved subject to various guidelines conditions, and standards. Condition Nos. 3 and 10 of that order require that the interim parking lot use and its related certificate of occupancy expire on March 9, 1997.

Pursuant to 11 DCMR 3029 and by letter dated September 28, 1994, counsel for the applicant filed a motion for reconsideration of Z.C. Order No. 638-C. The motion requests the Zoning Commission to extend the time restrictions in Condition Nos. 3 and 10 of Z.C. Order No. 638-C.

The applicant proposed one of two options as its solution. The first option was that it be given a reasonable period of time (6 months was recommended) from the effective date of Z.C. Order No. 638-C to file for a building permit; after which the 3-year interim-use-period would begin. The second option was to terminate the interim use and the related certificate of occupancy on March 9, 1998. The applicant believed that either option was consistent with the Zoning Commission's past practices with respect to other planned unit development (PUD) modifications.

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By memorandum dated October 17, 1994, the Office of Zoning requested the Commission to continue to permit interim-use applications to operate as though they were requests to extend the validity of a PUD, in order to administratively maintain the orderly processing of such applications. The OZ memorandum stated the following:

"The Office of Zoning (OZ) wants to be clear when it states that there are no past practices of the Zoning Commission approving interim uses for an approved PUD project site. This practice is new for the Zoning Commission, OZ, and others. The reasonable period of time of 6 months, as recommended by the applicant in option No. 1, appears to be arbitrary. What is reasonable for some may not be reasonable for others.

Findings of Fact No. 20 of the Z.C. Order No. 638-C states the following:

On June 13, 1994 at its regular monthly meeting, the Zoning Commission considered the request of OZ to treat the expiration of this interim use as if the Commission were considering a request to extend the validity of Z.C. Order Nos. 638, 638-A and 638-B. OZ believes that because this PUD modification is unprecedented and represents the first request of the Zoning Commission to consider an interim use for a previously approved PUD, and because of the procedural and administrative uncertainties that may be associated with this approval, the zoning process would be best served by proceeding in an orderly manner that is procedurally and administratively prudent. The Commission concurs.

Z.C. Order No. 638-B, which was the previous order in this PUD case, expired on March 9, 1994. If the applicant filed for a building permit on or before that date, one additional year would be provided to start construction. The applicant did not file for a building permit on or before March 9, 1994. Consequently, the PUD would have expired on that date had not the applicant filed its application for an interim use or a request to extend the validity of the PUD.

Because the interim use application was filed before March 9, 1994, there is a procedural necessity to avoid a period of time between the expiration of Z.C. Order No. 638-B and the effectuation of Z.C. Order No. 638-C, when no PUD order is in effect. OZ believes that it is procedurally crucial that there be no break in the validity of the PUD's effect. This objective can best be achieved by permitting the approved interim use for a PUD project site to operate much like the

approval of an extension of the validity of a PUD. OZ notes that the requested three years by the applicant presents a three-year extension of the validity of Z.C. Order No. 638-B.

OZ opposes applicant's option No. 1, and takes no position on applicant's option No. 2. OZ believes, however, that if the Commission is persuaded to extend the interim use and related certificate of occupancy, it should continue to use March 9th of whatever year the Commission deems appropriate.

For the reasons set forth and in order to administratively maintain the orderly processing of such applications, OZ requests the Zoning Commission to continue to permit interim use applications to operate as though they were requests to extend the validity of PUDs."

By letter dated October 13, 1994, Advisory Neighborhood Commission (ANC) 2B opposed the applicant's motion for reconsideration. ANC 2B indicated that its previous support for the interim use as a parking lot was based on its understanding that the use was temporary in nature and would expire on March 9, 1997.

On October 17, 1994 at its regular monthly meeting, the Zoning Commission considered the letters from counsel for the applicant and ANC 2B, and the memorandum from OZ. After discussion and consideration of a compromise proposal from OZ staff, the Zoning Commission granted, in part, the applicant's motion for reconsideration for an additional period of six (6) months.

The Commission concurs with OZ's compromise proposal, and, in part, with the applicant and, in part, with ANC 2B for the following reasons:

- a. Unlike extensions of the validity of PUDs, the establishment of an interim use requires the acquisition of a building permit and certificate of occupancy, construction of the use, and other time-consuming activities not involved in simple extensions;
- b. At the same time, the concern of the ANC, that this use be temporary, must be given "great weight" consideration. This concern, coupled with the simplicity of the use being installed, does not justify an extension of time through March 9, 1998; and

- c. It would be inappropriate for the applicant to turn this interim use into such a lucrative venture, as for there to be developed a disincentive for the actual construction of the originally approved PUD.

The Commission believes that after balancing all of the issues relative to the motion for reconsideration, and having given "great weight" consideration to ANC-2B, it has made a decision that is reasonable and appropriate.

The Commission also believes that its decision is not inconsistent with the intent of the Zoning Regulations and the Zoning Act, nor does it adversely affect the viability of the interim parking lot use.

The Commission further believes that a six (6) month extension of the interim use and related certificate of occupancy will not change the temporary nature of the interim use.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia orders **APPROVAL** of a modification to Condition Nos. 3 and 10 of Z.C. Order No. 638-C to read as follows:

3. The interim use as a parking lot shall be valid for a period of three and one-half (3 1/2) years; that is, until September 9, 1997; and
10. The certificate of occupancy for the interim use shall not extend beyond September 9, 1997.


Vote of the Zoning Commission taken at the public meeting on October 17, 1994: 3-1 (Jerrily R. Kress, William B. Johnson, and Maybelle Taylor Bennett, to extend - John G. Parsons, opposed and William L. Ensign, not present not voting)

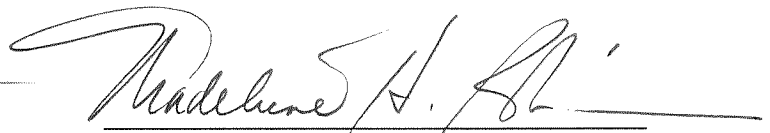
This order was adopted by the Zoning Commission at the public meeting on November 14, 1994 by a vote of 5-0 (William B. Johnson, William L. Ensign and Maybelle Taylor Bennett, to adopt as amended, and John G. Parsons and Jerrily R. Kress, to adopt by absentee vote).

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In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on _____.

MAR 17 1995


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Director
Office of Zoning

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